

AMENDED IN ASSEMBLY MARCH 25, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1442**

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### Introduced by Assembly Member Gatto

January 6, 2014

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An act to amend Sections 1798.3, 1798.14, ~~1798.17, 1798.18, and 1798.19, and 1798.53~~ of the Civil Code, relating to the Information Practices Act of 1977.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1442, as amended, Gatto. The Information Practices Act of 1977: local government.

The Information Practices Act of 1977 ~~prescribes requirements on state agencies for the maintenance of personal information, as defined, and restricts a state agency from disclosing personal information contained in its records, as specified. The act requires each *state* agency to maintain in its records only personal information that is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government. The act makes a person who willfully requests or obtains a record from an agency under false pretenses or who intentionally discloses specific information under certain circumstances guilty of a misdemeanor. The act provides that an intentional violation of its provisions by an officer or employee of an agency constitutes cause for discipline, including termination of employment. The act also provides a civil action against an agency for specified failures under the act. The act prohibits an individual's name and address from being distributed for commercial purposes, as specified, unless specifically authorized by law.~~

~~This bill would expand the definition of “agency” to include local governmental entities.~~

~~The~~

~~This bill would generally require an agency expand that restriction on the maintenance of personal information to apply to a local agency, and would require a state or local agency to destroy personal information maintained in accordance with the act when the state or local agency determines the personal information it is no longer relevant and necessary to accomplish its purpose. The bill would establish special provisions for a Kindergarten and grades 1 to 12, inclusive, school district regarding the notification of students, parents, and guardians if it considers a program to gather or maintain student personal information in its records, restrictions on the gathering and maintenance of information gathered from social media, as defined, and the destruction and parental notification for of personal information gathered from social media on students maintained by the district.~~

~~By expanding the duties of local officials and expanding the definition of a crime, officials, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.~~

*The people of the State of California do enact as follows:*

SECTION 1. Section 1798.3 of the Civil Code is amended to read:

1798.3. As used in this chapter:

(a) ~~The term “personal”~~ “*Personal* information” means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.

(b) ~~The term “agency”~~ “*Agency*” means every state ~~or local~~ office, officer, department, division, bureau, board, commission, or other state ~~or local~~ agency, except that ~~the term agency~~ “*agency*” shall not include:

(1) The California Legislature.

(2) Any agency established under Article VI of the California Constitution.

(3) The State Compensation Insurance Fund, except as to any records ~~which~~ *that* contain personal information about the employees of the State Compensation Insurance Fund.

(4) *A local agency, as defined in subdivision (a) of Section 6252 of the Government Code.*

(c) ~~The term “disclose”~~ “*Disclose*” means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity.

(d) ~~The term “individual”~~ “*Individual*” means a natural person.

(e) ~~The term “maintain”~~ “*Maintain*” includes maintain, acquire, use, or disclose.

(f) ~~The term “person”~~ “*Person*” means any natural person, corporation, partnership, limited liability company, firm, or association.

(g) ~~The term “record”~~ “*Record*” means any file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual’s name, photograph, finger or voiceprint, or a number or symbol assigned to the individual.

1     (h) ~~The term “system”~~ “System of records” means one or more  
2 records, which pertain to one or more individuals, which is  
3 maintained by any agency, from which information is retrieved  
4 by the name of an individual or by some identifying number,  
5 ~~symbol~~ *symbol*, or other identifying particular assigned to the  
6 individual.

7     (i) ~~The term “governmental”~~ “Governmental entity,” except as  
8 used in Section 1798.26, means any branch of the federal  
9 government or of the local government.

10    (j) ~~The term “commercial”~~ “Commercial purpose” means any  
11 purpose which has financial gain as a major objective. It does not  
12 include the gathering or dissemination of newsworthy facts by a  
13 publisher or broadcaster.

14    (k) ~~The term “regulatory”~~ “Regulatory agency” means the  
15 Department of Business Oversight, the Department of Insurance,  
16 the Bureau of Real Estate, and agencies of the United States or of  
17 any other state responsible for regulating financial institutions.

18    (l) “Social media” means an electronic service or account, or  
19 electronic content, including, but not limited to, videos, still  
20 photographs, blogs, video blogs, podcasts, instant and text  
21 messages, email, online services or accounts, or Internet Web site  
22 profiles or locations.

23    SEC. 2. Section 1798.14 of the Civil Code is amended to read:  
24    1798.14. (a) *Notwithstanding the exception established in*  
25 *paragraph (4) of subdivision (b) of Section 1798.3, as used in this*  
26 *section, “agency” includes a local agency, as defined in*  
27 *subdivision (a) of Section 6252 of the Government Code.*

28    (b) (1) Each agency shall maintain in its records only personal  
29 information that is relevant and necessary to accomplish a purpose  
30 of the agency required or authorized by the California Constitution,  
31 statute, ordinance, or mandated by the federal government, and,  
32 except as provided in ~~subdivision (b)~~, *subdivisions (c) and (d)*,  
33 shall destroy the personal information when the agency determines  
34 the personal information is no longer relevant and necessary to  
35 accomplish that purpose.

36    (2) *This subdivision does not apply to official records recorded*  
37 *in the office of a county recorder.*

38    (c) *A school district for kindergarten or grades 1 to 12,*  
39 *inclusive, that considers a program to gather or maintain in its*  
40 *records personal information on any student enrolled in the school*

1 *district shall notify students, parents, and guardians and provide*  
2 *an opportunity for public comment prior to the adoption of such*  
3 *a program.*

4 ~~(b)~~

5 *(d) A school district for kindergarten or grades 1 to 12, inclusive,*  
6 *that gathers and maintains or maintains, or that contracts to gather*  
7 *or maintain in its records personal information gathered from*  
8 *social media on a student enrolled in the school district in shall do*  
9 *the following:*

10 *(1) Gather or maintain only information that was made publicly*  
11 *accessible, not to include either:*

12 *(A) Information that was reposted or otherwise made available*  
13 *by another party without the express consent of the original author.*

14 *(B) Any secondary information, including, but not limited to,*  
15 *geolocation information, derived from content posted to social*  
16 *media, unless that secondary information itself intentionally was*  
17 *made publicly accessible.*

18 *(2) Provide students with access to any personal information*  
19 *about the student gathered or maintained by the district and*  
20 *obtained through social media, and the opportunity to correct or*  
21 *delete erroneous information or information gathered or*  
22 *maintained in violation of paragraph (1).*

23 ~~(1)~~

24 *(3) Destroy personal information gathered from social media*  
25 *maintained in its records within one year of a student turning 18*  
26 *years of age, or within one year after the student is no longer*  
27 *enrolled in the school district, whichever is first.*

28 ~~(2)~~

29 *(4) Notify each parent or guardian of the student that personal*  
30 *information is being gathered from social media and that any*  
31 *information maintained in its records with regard to the student*  
32 *shall be destroyed in accordance with paragraph ~~(1)~~ (3).*

33 *(5) If the school district contracts with a third party to gather*  
34 *or maintain in the records of the third party personal information*  
35 *on a student enrolled in the school district, require the third party*  
36 *to hold all student personal information strictly confidential and*  
37 *prohibit it from using that information for its own purposes, selling*  
38 *the information, or sharing the information with any other entity*  
39 *unless required to do so by law.*

40 ~~SEC. 3. Section 1798.17 of the Civil Code is amended to read:~~

1     ~~1798.17. Each agency shall provide on or with any form used~~  
2     ~~to collect personal information from individuals the notice specified~~  
3     ~~in this section. When contact with the individual is of a regularly~~  
4     ~~recurring nature, an initial notice followed by a periodic notice of~~  
5     ~~not more than one-year intervals shall satisfy this requirement.~~  
6     ~~This requirement is also satisfied by notification to individuals of~~  
7     ~~the availability of the notice in annual tax-related pamphlets or~~  
8     ~~booklets provided for them. The notice shall include all of the~~  
9     ~~following:~~

10    ~~(a) The name of the agency and the division within the agency~~  
11    ~~that is requesting the information.~~

12    ~~(b) The title, business address, and telephone number of the~~  
13    ~~agency official who is responsible for the system of records and~~  
14    ~~who shall, upon request, inform an individual regarding the location~~  
15    ~~of his or her records and the categories of any persons who use~~  
16    ~~the information in those records.~~

17    ~~(c) The authority, whether granted by statute, regulation,~~  
18    ~~executive order, or ordinance that authorizes the maintenance of~~  
19    ~~the information.~~

20    ~~(d) With respect to each item of information, whether submission~~  
21    ~~of such information is mandatory or voluntary.~~

22    ~~(e) The consequences, if any, of not providing all or any part~~  
23    ~~of the requested information.~~

24    ~~(f) The principal purpose or purposes within the agency for~~  
25    ~~which the information is to be used.~~

26    ~~(g) Any known or foreseeable disclosures that may be made of~~  
27    ~~the information pursuant to subdivision (e) or (f) of Section~~  
28    ~~1798.24.~~

29    ~~(h) The individual's right of access to records containing~~  
30    ~~personal information that are maintained by the agency.~~

31    ~~This section does not apply to any enforcement document issued~~  
32    ~~by an employee of a law enforcement agency in the performance~~  
33    ~~of his or her duties wherein the violator is provided an exact copy~~  
34    ~~of the document, or to accident reports whereby the parties of~~  
35    ~~interest may obtain a copy of the report pursuant to Section 20012~~  
36    ~~of the Vehicle Code.~~

37    ~~The notice required by this section does not apply to agency~~  
38    ~~requirements for an individual to provide his or her name,~~  
39    ~~identifying number, photograph, address, or similar identifying~~  
40    ~~information, if this information is used only for the purpose of~~

1 identification and communication with the individual by the  
2 agency, except that requirements for an individual's social security  
3 number shall conform with the provisions of the federal Privacy  
4 Act of 1974 (Public Law 93-579).

5 SEC. 4. Section 1798.18 of the Civil Code is amended to read:

6 1798.18. (a) Each agency shall maintain all records, to the  
7 maximum extent possible, with accuracy, relevance, timeliness,  
8 and completeness.

9 (b) That standard need not be met except when those records  
10 are used to make any determination about the individual. When  
11 an agency transfers a record outside of state or local government,  
12 it shall correct, update, withhold, or delete any portion of the record  
13 that it knows or has reason to believe is inaccurate or untimely.

14 SEC. 5.

15 SEC. 3. Section 1798.19 of the Civil Code is amended to read:

16 1798.19. Each agency, when it provides by contract for the  
17 operation or maintenance of records containing personal  
18 information to accomplish an agency function, shall cause,  
19 consistent with its authority, the requirements of this chapter to be  
20 applied to those records. For purposes of Article 10 (commencing  
21 with Section 1798.55), any contractor and any employee of the  
22 contractor, if the contract is agreed to on or after July 1, 1978, shall  
23 be considered to be an employee of an agency. *Except as provided*  
24 *in Section 1798.14, local government functions mandated by the*  
25 *state are not deemed agency functions within the meaning of this*  
26 *section.*

27 SEC. 6. Section 1798.53 of the Civil Code is amended to read:

28 1798.53. (a) Any person, other than an employee of the state  
29 or of a local government agency acting solely in his or her official  
30 capacity, who intentionally discloses information, not otherwise  
31 public, which they know or should reasonably know was obtained  
32 from personal information maintained by an agency or from  
33 "records" within a "system of records" (as these terms are defined  
34 in the federal Privacy Act of 1974 (5 U.S.C. Sec. 552a)) maintained  
35 by a federal government agency, shall be subject to a civil action,  
36 for invasion of privacy, by the individual to whom the information  
37 pertains.

38 (b) In any successful action brought under this section, the  
39 complainant, in addition to any special or general damages  
40 awarded, shall be awarded a minimum of two thousand five

1 hundred dollars (\$2,500) in exemplary damages as well as  
2 attorney's fees and other litigation costs reasonably incurred in  
3 the suit.

4 (e) The right, remedy, and cause of action set forth in this section  
5 shall be nonexclusive and is in addition to all other rights, remedies,  
6 and causes of action for invasion of privacy, inherent in Section  
7 1 of Article I of the California Constitution.

8 SEC. 7. No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution for certain  
10 costs that may be incurred by a local agency or school district  
11 because, in that regard, this act creates a new crime or infraction,  
12 eliminates a crime or infraction, or changes the penalty for a crime  
13 or infraction, within the meaning of Section 17556 of the  
14 Government Code, or changes the definition of a crime within the  
15 meaning of Section 6 of Article XIII B of the California  
16 Constitution.

17 However, if the Commission on State Mandates determines that  
18 this act contains other costs mandated by the state, reimbursement  
19 to local agencies and school districts for those costs shall be made  
20 pursuant to Part 7 (commencing with Section 17500) of Division  
21 4 of Title 2 of the Government Code.

22 SEC. 4. *If the Commission on State Mandates determines that*  
23 *this act contains costs mandated by the state, reimbursement to*  
24 *local agencies and school districts for those costs shall be made*  
25 *pursuant to Part 7 (commencing with Section 17500) of Division*  
26 *4 of Title 2 of the Government Code.*